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ANALYSIS OF DOCUMENTARY EVIDENCE

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SUMMARY OF RELEVANT POINTS

Reviews of evidence, findings, and proof in trial of General YAMASHITA, summarizing high spots of atrocities, and particularly establishing his eventual responsibility for same.

Analyst: W.H.WAGNER

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GENERAL HEADQUARTERS  
UNITED STATES ARMY FORCES, PACIFIC  
OFFICER OF THE THEATER JUDGE ADVOCATE

JA. 201-Yamashita, Tomoyuki,  
General, Imperial Japanese Army.

A.P.O. 500,  
26 December 1945.

**SUBJECT:** Review of the Record of Trial by a Military Commission of  
Tomoyuki Yamashita, General, Imperial Japanese Army.

**TO:** The Commander-in-Chief, United States Army Forces, Pacific,  
APO 500.

1. OFFENSES:

a. Charge: Violation of the Laws of War

While commander of Armed Forces of Japan at war with the United States of America and its Allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its dependencies, particularly the Philippines, between 9 October 1944 and 2 September 1945, at Manila and other places in the Philippines

(R 31)

Such atrocities are enumerated as Items 1-123 in the Bill of Particulars as discussed in paragraph 2 hereafter, and proof on each of the 90 items on which testimony was adduced is analyzed in detail in the annex to this review

b. Pleas: Not Guilty

(R 58)

c. Findings: Guilty

(R4063)

d. Sentence: Death by hanging

(R4063)

e. Maximum Sentence: As a military commission may direct

f. Convening Authority: Lieutenant General W. D. Styer, U. S. Army, commanding United States Army Forces, Western Pacific, who approved the sentence

g. Place of Trial: The High Commissioner's Residence, Manila, P. I.

(R 1)

h. Date of Trial: Arraignment 8 October 1945;

Trial 29 October 1945 to 7 December 1945 (R 1,62,  
4063)



2. GENERAL REMARKS:

This is a trial by military commission. By Letter Order (R 20), file AG 0005 (24 Sept 45) DCS, General Headquarters, United States Army Forces, Pacific, dated 24 September 1945, Subject: "Trial of War Criminals", the Commanding General, United States Army Forces, Western Pacific, was authorized to appoint military commissions for the trial of war criminals, and, accordingly, accused, General Tomoyuki Yamashita, was brought to trial before such a commission under charges alleging violation of the Laws of War as above set forth. Accused was arraigned 8 October 1945 and, pursuant to motion of the defense, a Bill of Particulars and later a supplemental Bill were furnished accused, setting forth the details of the 123 atrocities included within the charge, for which accused was alleged to be responsible. The actual trial began 29 October 1945 and ended 7 December 1945. The record consisted of 4,063 pages and 437 exhibits. The prosecution introduced competent evidence on 90 of the items of the original and supplemental Bills, establishing the killing by Japanese military and naval personnel operating on land, of more than 30,000 men, women and children throughout the Philippines, without trial or apparent cause, in addition to other thousands of acts of rape, torture, looting, pillaging and destruction of homes, entire villages and other civilian property, as well as the killing and mistreatment of prisoners of war and civilian internees. Because of the exceedingly voluminous character of the testimony, the evidence of these atrocities will be summarized and consolidated in this review, while each of the several items alleged in the Bills of Particulars on which evidence was introduced, together with an analysis of the evidence to support it, is set forth in an annex hereto appended. In summarizing the evidence for the prosecution, consideration will be first given to alleged atrocities against civilians, showing their geographical distribution throughout the Philippines, followed by similar actions against prisoners of war and civilian internees, and finally the evidence of the alleged individual responsibility of the accused for actions committed by his subordinates.

3. EVIDENCE: The competent evidence, therefore, is briefly summarized as follows:

a. Evidence for the Prosecution:

(1) Offenses against Civilians:

MANILA (Items 3, 10, 12, 15, 16, 17, 20, 23, 24, 25, 27, 28, 29, 30, 32, 34, 35, 36, 41, 48, 50, 51, 52, 53, 60, 61, 62, 63, 64, 68, 77, 80, 88, 89, 93, 97, 98, 99, 101, 102, 104, 105)

Upon the approach of the American forces in February 1945, the Imperial Japanese Army and Navy forces killed and wounded great numbers of the people of Manila, destroyed large areas of the city and blew up and burned homes and other private property (R 370, 383, 400, 467, 589, 676, 769, 778, 1094, 1103, 1107; Ex 82, 91, 92, 93, 119, 124, 131, 153, 157, 162, 192), fortified and defended hospitals and churches, forcing the Americans to attack and destroy these buildings in order to drive out the Japanese armed forces (R 572, 1259, 1292). Other religious and charitable institutions were deliberately destroyed by explosives and fire (R 179, 185, 1258, 1282, 2048, 2054; Ex 15), as were public buildings of no military value (R 1188, 1200). Over 8,000 men, women and children, all unarmed, non-combatant civilians, were killed and over 7,000 mistreated, maimed and wounded without cause or trial (R 212, 271, 348, 370, 412, 429, 445, 587, 606, 669, 717, 743, 778, 806, 871, 1147, 1159, 1197, 1200, 1222, 1262, 1270, 1299, 1370, 2211, 2223).



The Japanese considered all Filipinos, including women and children, as guerrillas, and ordered them put to death upon advance of the Americans on Manila (R 2905, 2906; Ex 392). The orders prescribed the procedure to be followed: the victims were to be gathered in a house or other place, killed with the least expenditure of ammunition and manpower, and the bodies disposed of by burning with the building or being thrown into a river (R 2909, 2910; Ex 393). These orders were carried out and supervised by officers of the Imperial Japanese Army and Navy (R 136, 204, 223, 264, 267, 346, 588, 716, 740, 767, 777, 831, 833, 1139, 1143, 1260, 2152, 2168, 2345). In two instances, the Japanese officers stated to their victims that they were acting pursuant to orders of higher authority (R 833, 2174).

In the mass of the 44 atrocities revealed by the evidence, there appeared a similarity of pattern and an orderliness and dispatch in execution. In the first place, the reign of terror broke out suddenly, lasted a short period, principally from 6 to 30 February 1945, and followed the standard procedure prescribed in orders. The victims were rounded up at a central place, usually a house or larger building (R 190, 410, 429, 460, 463, 587, 606, 715, 738, 767, 775, 797, 823, 2157; Ex 131), where they were bayoneted, beheaded, burned or otherwise killed with the minimum expenditure of ammunition (R 148, 192, 271, 283, 348, 405, 410, 453, 587, 621, 717, 745, 779, 798, 833, 1134, 1197, 2151, 2168; Ex 126). The bodies were then disposed of by throwing into a river (R 306, 855) or burning with a house or building (R 467, 607, 639, 768, 778, 1188, 1200, 1237; Ex 91, 92, 93, 114, 124) or burying in mass graves (R 2152). Further evidence of prior planning was the advance preparation of the sites of the atrocities, as for example, having strings installed to set off explosives (R 445, 477), holes cut in the floor for bodies to fall through (R 623), mass graves dug (R 2151, 2288) and gasoline ready for burning bodies and buildings (R 467, 589, 669, 768, 778).

Throughout this period, individual Japanese and groups of Japanese indulged in acts of bestiality and sadism. Hundreds of women and girls were raped (R 293, 302, 318, 365, 508, 513, 536, 551, 669, 676, 1252, 1276, 1291, 2045, 2052), breasts and genitals of females were hacked off or abused (R 385, 519, 670, 763; Ex 77, 82) and dead bodies of women were violated (R 318). Babies were thrown into the air and spitted on bayonets (R 483, 1169). Men and women, without cause, were beaten with clubs and gun butts, burned, hung by the limbs, blinded and given the "water cure" (large quantities of water being forced through the mouth and nostrils) (R 871, 873, 883, 901, 2216). Looting and pillaging often accompanied these atrocities (R 1254, 1257, 1291).

BATANGAS PROVINCE, LUZON ISLAND (Items 1, 43, 44, 45, 47, 49, 54, 57)

More than 16,000 unarmed, non-combatant civilians, including large numbers of women and children, were killed in Batangas Province from November 1944 to April 1945 (R 1510, 1534, 1547, 1568, 1580, 1594, 1601, 1740, 1770, 1805, 1829, 1846, 1855). In addition to bayoneting, shooting and burying the victims alive, the Japanese forced 300 men to jump by small groups into a well 30 meters deep, after which many were shot and heavy weights were dropped on them (R 1493-1498). In another instance, 300 to 400 unarmed civilians were forced into a room, bayoneted and shot, after which kerosene was poured on the bodies and they were set on fire (R 1768, 1769). In addition, women were raped (R 2179), two pregnant women were assaulted and an unborn child was ripped from its mother's body (R 2186, 2197), and the tongue of one male civilian was cut out (R 2179). While the killing of only 4,000 persons was directly proved as being caused by the Japanese (R 1510, 1534, 1547, 1568, 1580, 1740, 1805, 1829, 1846, 1855), the places, time and circumstances of the remaining 12,000 deaths from other than natural causes, indicate that they were caused by the same agency, i.e., the Japanese (R 1594, 1601, 1602, 1841).



Accompanying these massacres were numerous cases of pillaging (R 1766, 1776, 1815) and wanton destruction of private, public and religious property without military necessity (R 1559, 1588, 1592, 1624, 1648, 1661, 1671, 1738, 1740, 1833, 1849, 2190). Several entire barrios were burned to the ground. Lipa (population 45,000), Santo Tomas (100 houses and Tansuan (1,602 houses) were almost entirely destroyed by the Japanese (R1588, 1592, 1833, 1849, 2200).

The following evidence indicates a deliberate plan of extermination: most of the atrocities were committed during a short period in February 1945 (R 1491, 1506, 1515, 1524, 1533, 1546, 1556, 1621, 1628, 1647, 1652, 1655, 1661, 1671, 1707, 1710, 1714, 1736, 1737, 1739, 1764, 1775, 1783, 1799, 1813, 1839, 2182) and were carried on under the supervision of Japanese officers (R 1510, 1518, 1521, 1767, 1770, 1811, 1820, 1822) following the same procedure of concentrating the population of a town or barrio at a convenient place and killing them in an orderly manner (R 1491, 1506, 1515, 1524, 1534, 1707, 1710, 1714, 1764, 1775, 1801, 1813). The large scale upon which attempts were made to exterminate the male population of some places (R 1534, 1547, 1770) and the wanton killing of women and children (R 1510, 1588, 1591, 1740, 1805, 1829, 1846, 1855) indicate an intention to wipe out the people of the province. The deliberate destruction of whole towns and barrios was also a part of this plan (R 1588, 1592, 1628, 1648, 1652, 1661, 1671, 1739, 1833, 1849).

Although in a few specific instances the witnesses failed to give the branch of service of the Japanese perpetrators (R 1737, 1754, 2187), it was clearly proved that the mass of atrocities was committed by officers and soldiers of the Imperial Japanese Army (R 1770, 1781, 1802, 1815, 1829, 1833, 2182). Batangas Province, during this period, was under the control of the Fuji Heidan Headquarters, the 17th Infantry Regiment and the military police, all components of the army (R 1487, 1488; Ex 264).

#### BULACAN PROVINCE, LUZON ISLAND (Item 82)

Five hundred men of the village of Polo were gathered up by Japanese soldiers on 10 December 1944, some of them were beaten, a few released and the rest executed at the cemetery (R 2352, 2356). On the same day, 200 men of the town of Obando were also mistreated and executed at the hands of the Japanese army, navy and military police (R 2363-2365). On 7 February 1945, 29 men, women and children of Obando were killed by bayoneting, among them a 19 day old baby and a young woman who was first raped and disemboweled (R 2369-2374), and on 25 February, at the same place, several women and children were killed (R 2365) and a boatload of civilians on a river passing through Obando were fired on by the Japanese. Some drowned and those who did not were bayoneted, only one escaping (R 2374, 2375).

#### GAGAYAN PROVINCE, LUZON ISLAND (Part of Item 72)

Thirty miles east of Aparri at the barrio of Tapal on 30 June 1945, Japanese soldiers fired on five unarmed Filipinos in a boat, killing one and wounding two, bayoneted and killed three men and women after first tying them to a tree, blinded two men by grenade fragments and injured three others by saber and bayonet cuts, and disposed of ten or twelve other bodies in wells. Women were taken to the Japanese command post and did not return (R 2057-2062).

#### CAVITE PROVINCE, LUZON ISLAND (Items 66, 84, 85, part of 72)

On 16 and 17 December 1944, Japanese military police gathered 12 citi-



sons of Ims, including four doctors (R 2430-2433, 2436-2438, 2442-2443) and 23 men of Dasmariñas, guerrilla suspects, tortured them and later executed them in the cemetery without trial (R 2439, 2440, 2444, 2449, 2456, 2459-2465, 2472). Some were cruelly beaten, given the "water cure" and burned on the feet while suspended from the ceiling (R 2434, 2438-2439, 2448-2449, 2456, 2457). Other citizens, including a woman, were also tortured but not executed (R 2448, 2454, 2455). At Tagatay on 29 January, 1945 50 to 60 unarmed men, women and children were bound and held all day in a private house by Japanese soldiers who later took them out one by one, asked them if they were guerrillas and receiving a negative response, undressed them, laid them face down, pounded them on the back with pieces of wood, cut them with a sharp bolo knife and swing them over a steep cliff, 43 to 45 deaths resulting (R 2140-2149).

LAGUNA PROVINCE, LUZON ISLAND (Items 55, 56, 58, 105, part of 72)

On six different occasions from 21 February to 6 March 1945, Japanese officers, soldiers and military police gathered together and killed by bayoneting, a total of about 264 men, women and children from different barrios of Los Baños (R 1874-1890, 2378-2393), and even earlier, on 3 February, about 300 burned bodies and skeletons were found in and about the chapel at the College of Agriculture (R 2386, 2387). More than 2,500 men, women and children of Calamba were killed by bayoneting or burning on a single day, 12 February 1945 (R 1977, 1939, 1981, 1985, 1992, 1999, 2004, 2008, 2012), at which time numerous houses were burned (R 1981, 1985, 2005, 2010, 2013). All male residents of San Pablo between the ages of 15 and 50, 6,000 to 8,000 in all, were assembled in a local church on 24 February 1945 (R 2064, 2065, 2069). The 700 Chinese among those assembled were taken out, forced to dig large trenches and under the supervision of officers were bayoneted to death and thrown into the trenches (R 2070, 2072, 2083), some being beheaded by the officers (R 2084, 2088). The following day five patients were taken from the local hospital by the Japanese soldiers and beheaded while on their stretchers (R 2090, 2091). All inhabitants of another town, presumably Anilao, were killed during the month of February by one Japanese unit, which looted quantities of food, money and civilian goods (R 2093). Under the directions of a captain, 50 Japanese soldiers bound and bayoneted to death over 32 men, women and children at Pingas on 9 April 1945 (R 1894, 1901). Three soldiers at that time looted a private house and attempted to rape one female civilian (R 1892).

LA UNION PROVINCE, LUZON ISLAND (Item 90)

About 150 residents of the barrio of Negros, San Fernando, La Union, on 18 January 1945, 50 of the barrio of Casilegon, San Juan, on the same day, and 800 of the barrio of Dalayap, San Fernando, La Union, on 26 January 1945, were gathered up by the Japanese and killed by bayoneting, beheading and striking on the head (R 2338-2343), the barrios of Casilegon and Dalayap both being burned (R 2341, 2343).

MOUNTAIN PROVINCE, LUZON ISLAND (Items 114, 115, 116, part of 72)

A group of 16 men and 67 women and children on their way from Birak Mines to the lowlands in search of food on 18 April 1945 were seized by 30 Japanese soldiers under the command of two officers (R 2656, 2657, 2661). The men were tied in groups of four each, led 50 yards away, blindfolded, bayoneted and thrown into a ditch (R 2657, 2658). Despite screams of protest, the same treatment was given the women and children who were not blindfolded (R 2659). Only one of the entire group survived (R 2660).



A larger group of 315 men, women and children, also on a journey to the lowlands in search of food, from Sanayao on 10 April 1945, were relieved of all their possessions by Japanese soldiers (R 2314-2315, 2327-2332) who again separated the men from the women and children and took them to the side of a mountain where they were killed by being struck in the neck (R 2329). The women and children were taken family by family to the mountain and despite urgent protests were told it was "Yamashita's order to kill" (R 2317, 2324), and without reason were blindfolded, struck on the neck and rolled down the hill (R 2319, 2333, 2337). Only two to four of the entire group survived (R 2320, 2321, 2330).

Seven civilians were apprehended by 1,000 soldiers of the Japanese Tiger Unit (R 2507) at the village of Nanipil, Mountain Province, on 15 April 1945, and on pleading ignorance to questions concerning guerrillas' activities were "boxed", slapped and tied to a tree (R 2502, 2503) and the next day witnessed the soldiers machine gun and set fire to 30 houses of the village (R 2505). They were then taken to Titig Mountain where they were beheaded and fell or were pushed over the side (R 2506). One escaped fatal injury.

NUOVA VISCAIA PROVINCE, LUZON ISLAND (Items 11, part of 72)

During December 1944, 30 civilian prisoners at Pagumbong garrison in Vascaya were taken to previously prepared graves and executed by bayoneting (R 2404-2408), many having previously been tortured by the "water cure" or whipped (R 2405, 2406). One woman prisoner was repeatedly raped (R 2411, 2412).

At Bagabag Ferry on 17 December, the Japanese commander, after calling a meeting of all men of 15 years of age or over, selected about 25 with the help of a Filipino collaborationist, tied them up and killed 21 by bayoneting and shooting (R 2413, 2414).

ALBAY PROVINCE, BATAN ISLAND (Items 117, 119, 121)

About 80 unarmed, non-combatant, allegedly pro-American sympathizers were arrested and confined by the Japanese at Basco, Batan Island, from early May to about 1 September 1945 (R 2631, 2632, 2634, 2635). Some were tortured by being hung from the rafters and having small quantities of flaming liquid applied to their skin, others suffered broken hands and lost their eyes, and at least 74 were killed (R 2629, 2631, 2634, 2635).

CEBU PROVINCE, CENTRAL PHILIPPINES (Item 112)

Four Japanese soldiers at Cebu City on 26 March 1945, raped several civilian girls 13 to 19 years of age (R 2038, 2039), then killed 12 members of their family, including women and children, by bayoneting and burning, and finally destroyed the house by fire (R 2032-2035).

CITY OF DAVAO PROVINCE, MINDANAO ISLAND (Item 116)

Two days after a warning by a Japanese captain to the inhabitants of Davao City on 13 May 1945 that the Americans were coming and all civilians would be killed (R 2931-2933), Japanese army and navy personnel killed by bayoneting and beating 166 inhabitants of one barrie, including women and small children (R 2933-2940).

CITY OF ILOILO PROVINCE, PANAY ISLAND, CENTRAL PHILIPPINES (Item 123)

Four Filipino civilians were bayoneted and killed by Japanese soldiers at Iloilo from 8 to 13 January 1945, one after being thrown in the air and kicked and another following his request for sugar from a Japanese capi-



tain (R 2157-2164). Another was shot and killed by Japanese soldiers on 21 March when he mistook the soldiers for guerrillas and shouted, "Victory Parade", (R 2160-2161).

LEYTE PROVINCE, CENTRAL PHILIPPINES (Item 11)

At the barrier of Dapdap, Penson Island, on 29 December 1944, 300 civilians were assembled in a church by Japanese soldiers, where 100 were singled out, bayoneted and machine gunned, 60 dying from wounds received (R 2474-2481, 2495, 2496; Pros Ex 331). Elsewhere in the village, 300 other civilians, including many children, were murdered and several wounded in their houses or in the vicinity of the church (R 2481, 2483-2488, 2496-2498; Pros Ex 334, 335).

(2) Offenses against Prisoners of War and Civilian Internees (Items 2, 4, 6, 7, 9, 13, 69, 73, 76, 83, 86, 87, 89, 94, 95, 109, 122):

During the period October 1944 to February 1945, thousands of American and British prisoners of war and civilian internees, including women and children, were confined in Old Bilibid Prison, Santo Tomas University and Fort McKinley, Manila, and other prisoner of war and civilian internee camps in Cabanatuan and Los Baños, Luzon, and Puerto Princesa, Palawan, P.I. Large numbers were crowded together in poorly constructed and highly inflammable nipa and savale huts and their only facilities for drinking water or latrines were self-provided (R 1913-1933). Many slept on floors without mattresses or blankets and lacked sanitary facilities and medical supplies (R 2640). In some instances, medical supplies originally were provided once a month; in 1943 they were provided only upon request and finally not at all (R 2647). In other instances, quinine was furnished on rare occasions but short of that no other medical supplies or equipment were issued and outside purchases were not permitted (R 1351-1382, 2789-2790). Frequently, Japanese soldiers removed nearly all medical supplies from the few Red Cross packages permitted to reach the camps (R 2789-2802). A room in General Yamashita's headquarters was seen piled to the ceiling with Red Cross packages, many of which had been opened and rifled (R 1458). From October 1944 to February 1945 at Santo Tomas University, no doctors or nurses were provided but three American army doctors, prisoners of war, were permitted to operate a hospital in the University compound (R 1366). Diabetes and dysentery were prevalent and there were many deaths from disease and malnutrition (R 1468, 1861, 1914). The American army doctors were not permitted to give malnutrition as a cause of death (R 1468, 1861). Up to October 1944, a daily food ration having 1,000 to 1,100 calories per person per day was provided (R 1439). It could be supplemented by outside purchases with Red Cross funds and vegetables raised in small gardens, but there is at least one instance on record when the vegetables were confiscated (R 1354-1386, 1931). After October 1944, the daily food ration deteriorated rapidly (R 1356). First it was reduced to two meals per day and thereafter progressively reduced until it consisted of only between 400 and 600 calories per person per day (R 1356, 1439). By November 1944, rice reserves became exhausted, for the most part it became palay or unhulled rice, and no purchases from the outside were permitted (R 1362-1391, 1470-1483, 1931). Meals consisted of no more than a watery, starchy substance and in some instances a spoonful of dried fish (R 2837). As a result, the prisoners of war and civilian internees became very weak, most of them weighing less than 100 pounds, and ate pigeons, cats and rats when they could catch them (R 2643). During December 1944 and again in January 1945, garbage was made available to eat, and Japanese soldiers stood around and laughed as the prisoners of war and internees fought for it (R 2642-2643). Rotten meat filled with maggots and provided on occasion, and at Fort McKinley 400 prisoners of



war were forced to go one to two days without water and were reduced to eating grass and sticks dug up in their inclosure (R 2756-2758). At Santo Tomas University, Japanese guards and civilians received a much better ration than the prisoners of war and civilian internees there and appeared better fed (R 1386, 1419-1470). On 23 December 1944, four internees, Grinnell, Duggleby, Larson and Johnson, were arrested, one was tortured and subsequently all were beheaded (R 1369, 1370, 1414-1417).

On 28 December 1944, about 37 United States civilian internees, including women and children, and all their baggage, were moved in one truck from Camp Holmes to Old Bilibid Prison, a distance of about 175 miles (R 2782-2786). No more than three stops were made enroute for food or relief. There were two cases of dysentery in the group and in neither case was the internee given an opportunity to get off the truck (R 2783). Many of the prisoners of war and civilian internees were slapped and required to stand at attention or were forced to kneel on concrete floors for long periods of time by the Japanese guards (R 2838). Some were beaten with pick-handles, and others were compelled to work on military installations, in the construction of air fields or the loading and unloading of ships with ammunition and bombs (R 2806, 2807).

On about 15 December 1944, in Old Bilibid Prison, two scarcely recognizable, thin and frail American navy fliers were executed without trial (R 2267-2294). On 28 January 1945, at Los Banos, a civilian internee was walking toward camp between the two barbed wire fences surrounding it and without warning or challenge was shot by a Japanese guard. Although wounded, he was dragged to the guardhouse and with no semblance of trial was again shot through the head at the camp commandant's order (R 1939-1941, 1950).

On 14 December 1944 at Puerto Princesa, Palawan, a Japanese lieutenant ordered 150 United States prisoners of war into three air raid shelters (R 2709). Shortly afterwards, Japanese soldiers began firing into them. Poured in buckets of gasoline which they set on fire and when the prisoners of war tried to escape, they were shot down and most of them killed with rifle and machine gun fire or bayoneted and clubbed (R 2710-2714). At another time, a Japanese soldier progressively poured gasoline on the feet, hands and body of a wounded prisoner of war and lit it while the Japanese soldier's companions stood by and laughed and while the prisoner of war pleaded to be shot (R 2718-2723).

On 13 December 1944, 1,619 officers and enlisted men, prisoners of war, were crowded into the hold of the Japanese steamship "Oryoku Maru" (R 2836-2868). They were so crowded they had to remain in a sitting position without freedom of movement (R 2840-2869). They were not fed (R 2853). Five-gallon cans were provided for urinals and latrines which were not permitted to be emptied and, as a result, spilled all over the holds (R 2839-2869). Canteens and mess gear also had to be used for urinals and latrines, and in many instances afterward used for drinking and eating (R 2844). Many went mad, slit each others' throats and sucked warm blood from their victims (R 2844). The ship was not marked as a prisoner of war transport and was heavily armed with anti-aircraft guns. As a result, it was damaged and ultimately sunk by American aircraft, and many prisoners of war were lost (R 2860). As they scrambled out of the holds, they were machine gunned and bayoneted (R 2860-2861). The survivors were gathered at Olangapo, near Subic Bay, Luzon, and during their six-day stay there were given thirteen spoonful of raw rice containing rocks, sticks and dirt (R 2849-2862). Several were shot as they attempted to salvage food from the ship (R 2849, 2862).

On 21 March 1945, two American fliers who had been captured at Talisay, Cebu, were taken with their hands tied behind their backs to a



foxhole. Both were forced to a kneeling position, were struck on the neck by a Japanese sergeant with a large sword in the presence of a Japanese captain, lieutenant, four sergeants and a corporal, and the lieutenant fired three shots into the body of one. Later, the other one succeeded in getting out of the foxhole and asked for water. He was forced back into it; whereupon a Japanese soldier placed wood on top of it, poured in gasoline and set it on fire, burning the aviator to death (R 2120, 2133).

On or about 20 November 1944, three American fliers, on a mission to bomb the Japanese fleet, were shot down north of Luzon and made their way to Batan Island in a rubber boat. There they were captured and turned over to the Japanese by the natives. After being held for a time, they were taken out, tied to a tree, bayoneted and buried alive (R 2588, 2610).

### (3) Accused's Responsibility:

During the period 9 October 1944 to 3 September 1945, General Tomoyuki Yamashita was the Japanese Supreme Commander in the Philippines, under Count Terauchi, the Supreme Southern Commander (R 930, 1013, 2695, 3520). He was the Commanding General of the Japanese 14th Army Group (also referred to as the 14th Area Army) and, in addition, had command of all the Kempei Tai (military police) in the Philippines (R 105, 2255, 2272, 3593). The prisoner of war and civilian internment camps were under his control through the commanding general of war prisoners (R 3588; Ex 7).

At first there were a number of Japanese forces in the Philippines which were not under his command, such as the 4th Air Army, the 3rd Maritime Transport Command, 30,000 troops directly under Imperial Headquarters and the Southern Command, and the naval forces (R 3521, 3525, 3589) but these later were consolidated under him. About the first of December 1944, the 30,000 Imperial Headquarters and Southern Army troops were assigned to him (R 3525). The 4th Air Army came under his control on 1 January 1945 (R 2676, 3525, 3589). By the middle of February, the 3rd Maritime Transport Command came under Yamashita (R 3525).

The army forces in Manila and southern Luzon were formed into the Shimbu (mixed) group about 26 December 1944 and command of this group given to Lt. Gen. Shisuo Yokoyama (R 2664, 3621). The group consisted of 45,000 troops (R 2664), including the Fuji Heidan of 6,000 troops in Batangas and part of Laguna, under the immediate command of Col. Masatoshi Fujishige (R 2810, 2811).

On 6 January 1945, about 20,000 naval land forces in the Manila area were assigned to the army for tactical command only during land fighting (R 2535, 2536, 2538, 3526, 3588). These naval forces included marines and Hoguchi units from the Kobayashi group, and were under the immediate command of Rear Admiral Iwabuchi (R 2538, 2543, 2673). Disciplinary power over these forces remained in the naval commander, Admiral Okochi, and was exercised through Iwabuchi (R 2545). The army actually began to exercise command over these naval forces about 1 February (R 2668, 2671, 2672). Yamashita commanded these naval troops through Yokoyama's Shimbu group (R 2675).

The prosecution introduced the following evidence on the issue of the direct responsibility of accused as distinguished from that incident to mere command. Accused testified that he had ordered the suppression or "mopping up" of guerrillas (R 2811, 3545, 3547, 3578; Ex 353). About the middle of December 1944, Colonel Nishiharu, the Judge Advocate and police officer of the 14th Army Group, told Yamashita that there was a large number of guerrillas in custody and there was not sufficient time



to try them and said that the Kempei Tai would "punish those who were to be punished". To this Yamashita merely nodded in apparent approval (R 3762, 3763, 3814, 3815). Under this summary procedure over 600 persons were executed as "guerrillas" in Manila alone between 15 and 25 December 1944 (R 3763). In that same month, by a written order, Yamashita commended the Cortbitarte (Manila) Kempei Tai garrison for their fine work in "suppressing guerrilla activities" (R 905, 906). The captured diary of a Japanese Warrant Officer assigned to a unit operating in the Manila area contained an entry dated 1 December 1944, "Received orders, on the mopping up of guerrillas last night \* \* \* it seems that all the men are to be killed. \* \* \* Our object is to wound and kill the men, to get information and to kill the women who run away". (R 2882; Ex 385).

Throughout the record, evidence was presented in the form of captured documents and statements of Japanese made in connection with the commission of atrocities, referring to instructions to kill civilians. During the Paco massacre in Manila 10 February 1945, a Japanese officer said to his intended victims, "You very good man but you die", and, "Order from high officer kill you, all of you". (R 833). On 10 April 1945, during the murder of civilians near Samyao, a Japanese soldier said, "It was Yamashita's order to kill all civilians", (R 2317). At Dy Pas Lumber Yard, Manila, on 2 February 1945, the Japanese captain in charge said that this killing was "an order from above" (R 2174). At Calamba, Laguna, in February 1945, the killings were "by order of the Army" because the people were "anti-Japanese" (R 2893, 2894). On 19 February 1945, prior to the massacre at Los Banos, the Japanese garrison commander told the mayor of Los Banos that the Filipinos were double-crossers and deserved to be killed. The Japanese officer then told the mayor to prepare a list of 50 pro-Japanese civilians and all the other Filipinos would be killed (R 2396). A captured order to a machine gun company states, "There will be many natives along our route from now on. All natives, both men and women, will be killed". (R 2895).

Captured notes of instructions by Colonel Masatochi Fujishige, commander of the Fuji Heidan, to officers and non-commissioned officers of a reconnaissance unit contained the following, "Kill American troops cruelly. Do not kill them with one stroke. Shoot guerrillas. Kill all who oppose the Emperor, even women and children", (R 2812). Colonel Fujishige was under the command of Yamashita through General Yokoyama (R 2811).

Evidence in the form of captured documents was introduced to show that before and during the battle of Manila the following orders were issued by the Japanese forces: An operations order of the Manila Navy Defense Force and Southwestern Area Fleet directed that when Filipinos are to be killed consideration must be given to saving ammunition and manpower and because disposal of dead bodies is troublesome they should be gathered into houses which are scheduled to be burned or destroyed (R 2909). An order of the Kobayashi Heidan group, 13 February 1945, directed that all people on the battlefield in or around Manila, except Japanese and Special Construction Units (Filipino collaborators) would be put to death (R 2905, 2906; Ex 404) (Note: The Kobayashi group, which included the Manila Navy Defense Force, was commanded for land operations by Yamashita through General Yokoyama (R 2538, 2673, 3622). A "top secret" order by Yamashita as Commanding General, Shobu Army Group, dated 15 February 1945, stated, "The Army expects to induce and annihilate the enemy on the plains of Central Luzon and in Manila. The operation is proceeding satisfactorily." (R 122; Ex 6). "Shobu" was the code name of the 14th Army Group (Ex 3,4,5).

The prosecution introduced two witnesses, Marciso Lopus and Jaquin B. Galang, who were currently detained by the United States Government as



suspected collaborators (R 912, 1058; Def Ex A-B). Both these men previously had offered to exchange information as to Japanese and Filipino collaborators in return for their freedom, but both swore that they had received no promise of reward for their testimony in this case (R 913, 1059).

Lapus testified that from June 1942 to December 1944 he was private secretary to General Artemio Ricarte, an important Filipino puppet of the Japanese (R 917, 923). He further testified that one day in October 1944, Ricarte returned to his residence and told the witness that he, Ricarte, had just had a meeting with Yamashita who had said, "We take the Filipinos 100 per cent as our enemies because all of them, directly or indirectly, are guerrillas or helping the guerrillas", and, "In a war with the enemies, we don't need to give quarters. The enemies should go." (R 938). Yamashita revealed his plan to allow the Americans to enter Manila, then counter-attack and destroy the Americans and also the Filipinos in Manila (R 939, 1023). He further said that he had instructions to destroy Manila, particularly the most populated and commercial district of the city (R 939). Ricarte stated that Yamashita had said he had ordered that when the population gave signs of pro-American movement or actions, the whole population of that place should be wiped out (R 940). Ricarte later told the witness that when Ricarte, in November 1944, asked him to revoke this order, Yamashita said, "The order was given and could not be changed". (R 947).

The witness Galang testified that he was present and overheard a conversation between Yamashita and Ricarte, in December 1944 (R 1063, 1068, 1069). The conversation was interpreted by Ricarte's 13 year old grandson, Yamashita speaking Japanese which the witness did not understand and the interpreter translating into Tagalog which the witness did understand (R 1065, 1068). When asked by Ricarte to revoke his order to kill all the Filipinos, Yamashita became angry and spoke in Japanese which was interpreted into Tagalog as, "The order is my order. And because of that it should not be broken or disobeyed. It ought to be consumed, happen what may happen". (R 1069). (Note: The defense introduced Bialuzmo Romero, the 13 year old grandson of Ricarte, who said he had never interpreted between his grandfather and Yamashita, and specifically denied interpreting the conversation testified to by Galang (R 2014, 2021).)

b. Evidence for the Defense:

Accused was advised of his rights as a witness and elected to testify in substance that on 9 October 1944, nine days before American forces landed on Leyte, he was assigned as commanding general of the Japanese 14th Area Army and charged with the defense of the Philippines (R 3518-3519). He was not supreme commander in the Philippines since Count Terachi, Commander-in-Chief of the Japanese Southern Army, held that status until 30 August 1945, and maintained headquarters in Manila until 17 November 1945, when he moved to Saigon, French Indo-China (R 3520). When accused took over command of the Japanese 14th Area Army, there were 120,000 Japanese troops on Luzon and 100,000 on Mindanao. On 22 October 1945, by direction of the Japanese Southern Army, accused sent 50,000 Japanese troops to Leyte to assist the Japanese navy and air corps in the defense of that island (R 3523-3524). When, on about 7 December 1944, he realized the battle for Leyte was lost, his next problem was the defense of Luzon, and at his request, from the beginning of December 1944 to the middle of February 1945, the Japanese Southern Army added to his command the following troops in Luzon not previously under him: 30,000 troops from the Japanese Southern Army and Imperial General Headquarters at the beginning of December; the 4th Air Army on 1 January; Japanese navy troops for tactical purposes when engaged in land operations only as of 6 January (but actually on 3 February); and the 3rd Maritime Transport Command in



the middle of February (R 3524-3526, 3536). At its peak, his command reached 240,000 troops in Luzon and included 160 coastal ships, prisoner of war and civilian internee camps and the Kempai Tai or military police (R 3524-3526, 3585-3593). Prisoner of war ships or shipments did not come under his command until the middle of January 1945 (R 3542).

The Japanese 14th Area Army contained only infantry and had very little artillery support (R 3127). The population of Manila was so large it was impossible to feed it; the buildings were highly inflammable and the land was flat and impossible to defend (R 3527). As a result, on or about 6 December 1944, accused drew up a plan, which received the approval of the Japanese Southern Army, to take Manila out of the battle area and, using a delaying action, withdraw his forces to the mountains north and east of the city (R 3524-3527, 3669).

Pursuant thereto, about the middle of December 1944, he issued the necessary orders to evacuate the city and ordered his chief of staff to inform the 4th Air Army and the navy of his decision (R 3630). During December 1944 or January 1945, no known defenses were constructed in the city, but he maintained Japanese troops there for defense against airborne attack (R 3631, 3670). Only about 1,500 Japanese army troops remained in the city during the Battle of Manila and they were used to guard military supplies, protect the supply route, control traffic and obtain oil (R 3528). When, on 13 February 1945, he heard the greater part of the navy troops remained in the city, he sent an order for their immediate evacuation, but he did not receive a direct reply to his order (R 3529-3534). His telephone and wireless communication systems had broken down and it took from two days to two weeks to get a message through to different headquarters (R 3128, 3387). He specifically related:

"I never heard about any of the killings\*\*\*I was constantly under attack by large American forces \*\*\* under pressure day and night\*\*\* and it took all of my time and effort.\*\*\*I was not able to make a personal inspection.\*\*\* The troops were scattered about a great deal. \*\*\*Communications were very poor.\*\*\* I was forced to confront the superior United States forces with subordinates whom I did not know and with whose character and ability I was unfamiliar.\*\*\* I found myself completely out of touch with the situation.\*\*\*If I could have foreseen these things, I would have concentrated all my efforts toward preventing it.\*\*\*" (R 3654-3656).

Although the attitude of the Filipino civilians was one of increasing hostility (R 3574), he did not, though in violation of duty, investigate their conditions at any time (R 3583, 3584) nor did he ever inspect prisoner of war or civilian internment camps (R 3537), even though one was located at his headquarters (R 3573), nor receive reports of prisoner disposal submitted to his own headquarters (R 3612, 3613) or reports from the military police as to their methods or personnel held in their custody (R 3592). At no time did he order, receive any report or acquire any knowledge whatever of any mistreatment or killing of civilians, American prisoners of war or civilian internees by the military police or any of his subordinates (R 3534, 3536, 3540, 3541, 3543, 3551, 3646, 3647). Although he heard reports of guerrilla activities and directed their suppression or "mopping up" (R 3545, 3547, 3578), he did not authorize or receive reports of execution of suspected guerrillas by the military police (R 3552).

He was responsible for enforcing regulations concerning military trial (R 3877, 3878, 3882) though he could not change them as to their procedure (R 3873). Sentences of death by court-martial or other military tribunal in the 14th Area Army required his approval (R 3590, 3591, 3865, 3866), though execution of such sentences of the 35th Army and the



Shimbu group could be ordered by their own commander (R 3869, 3870). There were no trials of prisoners of war or civilian internees in his command while in the Philippines (R 3590, 3591) but he approved about 40 death sentences concerning guerrillas (R 3668). He was never advised that a large number of persons suspected as guerrillas were held by the Kempei Tai or that there was insufficient time to give them a trial or that their cases were disposed of without trial (R 3592, 3871). While a commanding officer must so control his troops that they do not commit atrocities, unless he has ordered, permitted or condoned the offenses he has no criminal responsibilities and if he has taken necessary precautions, then he is subject to no more than administrative punishment (R 3650, 3652, 3653, 3674). His first notice of the commission of any atrocities charged was his receipt of charges at New Bilibid prison (R 3556), although if he had known he would have taken every possible preventative and punitive measure known (R 3558). He was completely absorbed by the operational command of preparing to confront superior United States forces (R 3583, 3584), communications were poor, he was unfamiliar with the character and ability of his subordinates, because of the day and night pressure consuming all of his time he was completely out of touch with the situation. (R 3654-3657).

Lt. Gen. Muto, Chief of Staff, corroborated accused's testimony, emphasizing the difficulty of maintaining personal contact with troops and their conduct (R 2998, 3013, 3020, 3021, 3025) and the attendant necessity of relying on reports of subordinates which disclosed no abuses or violations of Laws of War.

The defense of Manila, guerrilla activities and treatment of prisoners of war and civilian internees were the subject of additional defense evidence.

The Negachi detachment of 1,800 which remained during the Battle of Manila (R 3113) was dispersed at five central points in the city (R 3114). It constructed a few pillboxes but prepared no other means of defense except the placing of dynamite on two bridges pursuant to directions (R 3141) and was not ordered to destroy buildings (R 3130) or even to occupy Manila (R 3127). Its mission included the maintenance of order, protection of supplies, prevention of atrocities (R 3114) and mopping up of guerrillas (R 3137). Shortly after a premature contact with the Americans on 3 February (R 3119), which was not expected by Japanese intelligence until 20 February (R 3117), communications became poor (R 3120, 3123, 3124) and while attempting to evacuate the city the troops were engaged and cut off at the Pace Station by the United States forces (R 3125). No reports of atrocities committed in the city of Manila were ever received by Colonel Neguchi, commander of the detachment (R 3124). The United States ATIS never intercepted an order by the accused directing the destruction of Manila or the killing of prisoners of war or non-combatant civilians (R 3293) even though the method of issuance would ultimately result in the production of a large number of written copies, as the immediate sub-commander, after oral receipt from General Yamashita, would reduce the order to writing and pass it down through the chain of command (R 3294).

Widespread guerrilla activities of well-organized units numbering at least 300,000 in the Central Luzon area and centered in Manila persisted from 1942 to the time of the surrender (R 3437, 3443, 3447). Their underground activities and repeated attacks on Japanese supply lines and personnel (R 3440, 3447) even included an attempt to blow up General Yamashita's headquarters (R 3044, 3045), culminating in the issuance of the suppression order (R 3036).

Four defense witnesses and a commission witness, Lt. Gen. Kou, commander of prisoner of war and civilian internee camps under General Yamashita, testified that food rations of American prisoners and civilian in-



terness, although greatly curtailed by absolute necessity during at least some of the internment period, did not differ from those issued to Japanese soldiers (R 3222, 3223, 3271, 3348, 3349). Some of the Japanese were better off, however, because they had other outside sources of food (R 3374, 3375). Difficulties were caused by lack of fuel for transportation and enemy and guerrilla attacks on supply lines (R 3189, 3192, 3219), the food situation being bad everywhere, even in General Yamashita's headquarters (R 3195). Primary responsibility was in the camp commanders, not General Yamashita, who, however, had the overall responsibility (R 3251, 3252). Grinnell, Duggleby, Larson and Johnson, the American internees at Santo Tomas under General Kou's command, were turned over by him to the Kempeitai late in December, though he thought for investigational purposes (R 3311, 3312, 3366-3368).

As to treatment of American prisoners aboard the "Oryoku Maru" (Item 23), though the room given them was uncomfortable and too small, there was no ventilation when the hatch was closed (R 3326, 3327) and the ship was unmarked (R 3331), they had the same accommodations as Japanese soldiers (R 3341). Loading, unloading and guarding of the prisoners were General Kou's responsibilities (R 3326, 3328, 3329), while furnishing of food and accommodations were duties of the captain of the ship, not at that time under the command of Kou (R 3341). Both accused and General Muto stated that the prisoners killed at Palawan were assigned to the 4th Air Army, which did not come under accused's command until 1 January 1945 (R 3029, 3541).

Some eight character witnesses, military and civilian, called by the accused, testified to his soundness of character as a man (R 3454, 3483, 3495, 3510), his firmness and fairness as a disciplinarian (R 3454, 3469, 3483) and his ability and energetic leadership as a soldier (R 3490, 3496), that he was well thought of by his people (R 3490), was without political ambitions (R 3490, 3511, 3515, 3516) and was a moderate as distinguished from a radical (R 3500, 3501, 3516).

\* \* \* \* \*

d. Sufficiency of the evidence to support the findings

The elements of the offense charged against accused may be stated as follows: (1) that the atrocities were committed as alleged in the Bill of Particulars (2) by members of accused's command; and (3) that accused unlawfully disregarded and failed to discharge his duty as commander of armed forces of Japan to control the operations of the members of his command, permitting them to commit such atrocities.

The evidence of the atrocities alleged in the ninety different specifications on which proof was adduced is clear, complete, convincing and, for the most part, uncontradicted by the defense. Throughout the islands, which were laid waste by an unparalleled burning and destruction of entire villages, homes, churches, hospitals and schools, all without military justification, its people, including thousands of women and children, were tortured, starved, beaten, bayoneted, clubbed, hanged, burned alive and subjected to mass executions rarely rivaled in history, more than 30,000 deaths being revealed by the record. Prisoners of war and civilian internees suffered systematic starvation, torture, withholding of medical and hospital facilities and execution in disregard of the rules of international law. The defense, while conceding the commission of atrocities, offered evidence tending to establish that many, though not a substantial portion, resulted from guerrilla activity. The frailty of this defense is revealed by executions of countless women and children, who, though in isolated instances engaged in guerrilla tactics, did not do so in large numbers or pursuant to plan, and by the systematic putting to death with



indescribable bestiality of little girls and boys only months or even days old. Furthermore, the alleged "guerrillas" were rarely accorded a trial as required by international law (RM 27-10, par. 351), and even that right when granted was wholly technical, as the suspects were not allowed to be represented by counsel, to testify or offer evidence on their own behalfs, at trials none of which lasted more than five minutes (R 2264, 2285). Though not denying the mistreatment, torture, murder or other violations of the laws of war with respect to American prisoners and civilian internees, and while not pretending that they were well fed, the accused claims that the Japanese themselves received the same rations. There is, however, substantial evidence of their systematic starvation while Japanese guards were well fed, and even when the rations were the same the Japanese frequently had outside sources of food unavailable to those held by them.

It is also abundantly proved that the atrocities were committed by members of accused's command. By his own testimony he assumed command of the 14th Area Army, embracing all of the Philippines, on 9 October 1944, and while his jurisdiction did not at first include the 4th Air Army some 30,000 troops directly under Count Terauchi, the Supreme Southern Commander, and the 3rd Maritime Transport Command, these troops successively came under his jurisdiction so that by 6 January he had under him all land troops in the Philippines and the tactical control of all naval forces fighting on land. By the 15th of February he also took over the 3rd Maritime Transport Command. During the entire time he controlled, through intermediate commanders, prisoner of war and civilian internee camps and the military police. Most of the atrocities occurred after 6 January, and on analysis it appears that all earlier ones were committed in areas occupied exclusively by troops under accused's command. No issue is tendered on this question except with respect to the Palawan incident involving 150 prisoners of war (Item 9) and the mistreatment of prisoners aboard the Oryoku Maru (Item 83), concerning which it is insisted that the troops committing these atrocities were not under accused's jurisdiction. It is unnecessary to decide the issue on these two cases in view of the overwhelming number of other atrocities concerning which there is no question but that they were committed by accused's troops.

The only real question in the case concerns accused's responsibility for the atrocities shown to have been committed by members of his command. Upon this issue a careful reading of all the evidence impels the conclusion that it demonstrates this responsibility. In the first place the atrocities were so numerous, involved so many people, and were so widespread that accused's professed ignorance is incredible. Then, too, their manner of commission reveals a striking similarity of pattern throughout. Shortly before the arrival of American forces in each area civilians were rounded up in a central place where they were bayoneted, beheaded or otherwise killed with a minimum expenditure of ammunition and the bodies buried or disposed of in rivers, by burning in houses or burying in mass graves. In many instances there was evidence of prearranged planning of the sites of the executions. Almost uniformly the atrocities were committed under the supervision of officers or noncommissioned officers and in several instances there was direct proof of statements by the Japanese participants that they were acting pursuant to orders of higher authorities, in a few cases Yamashita himself being mentioned as the source of the order. There was also a similarity of method in cases involving prisoners of war and civilian internees. All this leads to the inevitable conclusion that the atrocities were not the sporadic acts of soldiers out of control but were carried out pursuant to a deliberate plan of mass extermination which must have emanated from higher authority or at least had its approval. Evidence in the form of captured diaries and documents also indicates that the executions of civilians were ordered by higher command. For example,



captured notes and instructions by Colonel Fujishige, one of the accused's subordinates, contained the following: "Kill American troops cruelly. Do not kill them with one stroke. Shoot guerrillas. Kill all who oppose the Emperor, even women and children" (R 2812). Especially noteworthy was an order of the Kobayashi Group, commanded by accused through General Yokoyama. This order was found in the Manila area and directed that all people on the battlefield in and around Manila, except Japanese and special construction units, be put to death (R 2905, 2906, Ex 404). This group was commanded by a Major General and the source of the order therefore comes high in the chain of command, close to the accused himself. From the widespread character of the atrocities as above outlined, the orderliness of their execution and the proof that they have done pursuant to orders, the conclusion is inevitable that the accused knew about them and either gave his tacit approval to them or at least failed to do anything either to prevent them or to punish their perpetrators. Accused himself admitted that he ordered the suppression or "mopping up" of guerrillas (R 2811, 3545, 3547, 3578, Ex. 353) and that he took no steps to guard against any excesses in the execution of this order. One cannot be unmindful of the fact that accused, as experienced officer, in giving such an order must have been aware of the dangers involved when such instructions were communicated to troops the type of the Japanese.

There was some evidence in the record tending to connect accused even more directly with the commission of some of the atrocities. His own staff Judge Advocate, Colonel Hishiharu, told him that there was a large number of guerrillas in custody and not sufficient time to try them and said that the Kempei Tai "would punish those who were to be punished". To this proposition that guerrillas thus be executed without trial accused merely nodded in apparent approval (R 3762, 3763, 3814, 3815). In addition some significance may be given to the testimony of the witness Joaquin S. Galang who in December heard accused tell Ricarte, the celebrated collaborationist, through an interpreter, a 14-year old boy and grandson of Ricarte, in speaking of the alleged order to kill Filipinos in Manila, "the order is my order and because of that it should not be broken or disobeyed" (R 1069, 2014). While this evidence is somewhat weakened by proof that the witness who so testified was a confined collaborationist himself, and by the denial of the grandson that he interpreted the conversation, it cannot be wholly disregarded since it is entirely consistent with what later transpired in Manila. Accused stoutly insists that he knew nothing of any of the atrocities and assigns as the reason for his lack of knowledge the complete breakdown of communications incident to the swift and overpowering advance of the American forces and to his complete preoccupation with plans for the defense of the Philippines. He states that his troops were disorganized and out of control, leaving the inference that he could not have prevented the atrocities even had he known of them. With respect to Manila, he insists that he had only tactical command of naval troops operating in the city and although he had authority to restrain such troops committing disorders, he could not discipline them, the situation being thus complicated by dual control between himself and the Navy. Here in particular the defense witnesses testified to a breakdown of communications with the forces in Manila. While, however, it may be conceded that the accused was operating under some difficulty due to the rapidity of the advance of the Americans, there was substantial evidence in the record that the situation was not so bad as stated by the accused. General Yokoyama admitted that he had communication with troops in Manila until 20 February and with the accused until June and made frequent reports to him (R 2674). Surely a matter so important as the massacre of 8,000 people by Japanese troops must necessarily have been reported. Since accused had authority to control the operations of the naval troops he cannot absolve himself of responsibility by showing that others had the duty of punishing



them for disorders. There is no suggestion as to any breakdown in communications with Batangas where late in February some of the most widespread atrocities occurred, nor is there any substantial proof that communications with the other points in the islands at which atrocities occurred were at all interrupted. It is also noteworthy that the mistreatment of prisoners of war at Ft. McKinley occurred while accused was present in his headquarters only a few hundred yards distant and some of the other atrocities transpired close to the proximity of Baguio where he had his headquarters after removal from Manila. Taken altogether, the court was fully warranted in finding that accused failed to discharge his responsibility to control his troops thereby permitting the atrocities alleged and was thus guilty as charged.

5. CLEMENCY:

None of the five members of the commission recommended clemency, nor did Lieutenant General W. D. Styer, Commanding United States Army Forces, Western Pacific, who approved the sentence. Under international law all war crimes are subject to the death penalty, although a lesser sentence might have been imposed by the commission had it so desired (FM 27-10, par. 357). Under the facts and circumstances established in this case, the penalty imposed by the commission is appropriate to the offense and no commutation thereof is warranted. This office is therefor constrained to recommend that clemency be not extended.

6. OPINION: It is the opinion of this office that:

- a. The Commission was legally constituted;
- b. The Commission had jurisdiction of the person and the offense;
- c. The evidence supports the finding of guilty;
- d. The record discloses no errors injuriously affecting the substantial rights of the accused; and,
- e. The sentence is legal.

7. RECOMMENDATIONS: It is accordingly recommended that the sentence be confirmed and ordered executed under the supervision of and at a time and place to be designated by the Commanding General, United States Army Forces Western Pacific.

8. ACTION: An action designed to carry the above recommendations into effect should they meet with your approval, is submitted herewith.

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JOHN H. FINGER,  
Major, J.A.G.D.,  
Assistant Theater Judge Advocate.

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CHARLES P. MULDOON,  
Lieutenant Colonel, J.A.G.D.,  
Assistant Theater Judge Advocate.

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H. F. MATTOON,  
Colonel, J.A.G.C.,  
Assistant Theater Judge Advocate.

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S. F. COHN,  
Colonel, Infantry,  
Assistant Theater Judge Advocate.

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G. M. OLLIVETTI,  
Colonel, J.A.G.D.,  
Theater Judge Advocate